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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:)

Wallace Yard and Spur Lines)
Wallace, Idaho)

The Burlington Northern and Santa)
Fe Railway Company and Union)
Pacific Railroad Company,)

RESPONDENTS)

Proceeding Under Sections 104,)
106(a), 122(a), and 122(d)(3) of)
the Comprehensive Environmental)
Response, Compensation, and)
Liability Act, as amended 42)
U.S.C. §§ 9604, 9606(a), 9622(a),)
and 9622(d)(3).)

U.S. EPA

Docket No. 10-2002-0138

CERCLA

ADMINISTRATIVE ORDER ON CONSENT

WALLACE YARD
ADMINISTRATIVE ORDER ON CONSENT



TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. JURISDICTION	1
III. DEFINITIONS	2
IV. PARTIES BOUND	4
V. STATEMENT OF PURPOSE	5
VI. FINDINGS OF FACT	6
VII. CONCLUSIONS OF LAW	9
VIII. EPA AND IDEQ DECISIONMAKING PROCESS	10
IX. WORK TO BE PERFORMED	12
X. MODIFICATION OF THE WORK AND APPROVED PLANS	15
XI. QUALITY ASSURANCE	17
XII. PROGRESS REPORTS, MEETINGS, AND COST UPDATES	18
XIII. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY	18
XIV. DESIGNATED PROJECT COORDINATORS	22
XV. OTHER APPLICABLE LAWS	24
XVI. RECORD PRESERVATION	25
XVII. DISPUTE RESOLUTION	25
XVIII. STIPULATED PENALTIES	28
XIX. FORCE MAJEURE	30
XX. PAYMENT OF OVERSIGHT AND RESPONSE COSTS	32
XXI. INSURANCE AND INDEMNIFICATION	34
XXII. JUDICIAL REVIEW	36
XXIII. RESERVATIONS OF RIGHTS	36
XXIV. OTHER CLAIMS	38
XXV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION	39
XXVI. SATISFACTION	39
XXVII. SEPARATE DOCUMENTS	40

I. INTRODUCTION

1.1 This Administrative Order on Consent ("Consent Order") is entered into voluntarily by the United States Environmental Protection Agency (EPA), the Idaho Department of Environmental Quality (IDEQ), The Burlington Northern and Santa Fe Railway Company (BNSF), and Union Pacific Railroad Company (UPRR). In implementing this Consent Order, EPA and IDEQ agree to consult with the Coeur d'Alene Tribe of Indians (CDAT). This Consent Order concerns the performance of an Engineering Evaluation/Cost Analysis (EE/CA) for an area known as the Wallace Yard plus associated railroad spur lines, located in Shoshone County, Idaho. The Site consists of a former railroad switching yard within or adjacent to Wallace, Idaho, as well as associated railroad spur lines connecting the switching yard to former mining sites along Canyon Creek and Ninemile Creek.

II. JURISDICTION

2.1 This Consent Order is issued under the authority vested in the President of the United States by any or all of the following: Sections 104, 106(a), 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. §§ 9604, 9606(a), 9622(a), and 9622(d)(3). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987) and was further delegated to Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C. The

Regional Administrator for EPA Region 10 delegated this authority to the Director, Office of Environmental Cleanup.

2.2 Respondents agree to undertake all actions required by this Consent Order. In any action by EPA or the United States to enforce the terms of this Consent Order, Respondents consent to the authority and jurisdiction of EPA to issue or enforce this Consent Order. Respondents, IDEQ, and EPA agree not to contest the validity or terms of this Consent Order, or the procedures underlying or relating to it, in any action brought by the State of Idaho or the United States to enforce its terms.

III. DEFINITIONS

3.1 Unless otherwise expressly provided herein, terms used in this Consent Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

A. "Union Pacific Railroad Company" means the Delaware corporation of that name, and is abbreviated herein as "UPRR."

B. "The Burlington Northern and Santa Fe Railway Company" means the Delaware corporation of that name, and is abbreviated herein as "BNSF."

C. "CDAT" shall mean the Coeur d'Alene Tribe of Indians.

D. "Consent Order" shall mean this Consent Order, the appendices attached to this Consent Order and all documents or modifications to documents incorporated into this Consent Order according to the procedures set forth herein.

E. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

F. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

G. "IDEQ" shall mean the Idaho Department of Environmental Quality, and any successor departments or agencies of the State of Idaho.

H. "Respondents" shall mean UPRR and BNSF collectively or individually.

I. "Section" shall mean a portion of this Consent Order identified by a roman numeral.

J. "Site," for purposes of this Consent Order, shall consist of the Wallace Yard and Spur Lines, as depicted generally in Figure 1 of the Statement of Work (SOW), located in Shoshone County, Idaho, and all suitable areas in very close proximity to the Site that are necessary for implementation of the response actions.

K. "Spur Lines," for purposes of this Consent Order, shall mean the railroad tracks, beds, and rights-of-way providing historical railroad service to former mines or mills within the drainage of Ninemile Creek and Canyon Creek within Shoshone County, Idaho, as depicted generally in Figure 2 of the SOW.

L. "State" shall mean the State of Idaho.

M. "Wallace-Mullan Branch Consent Decree" shall mean the consent decree for Case No. 99-606-N-EJL, signed by the United States, State of Idaho, and Union Pacific Railroad Company, and entered by the U.S. District Court of Idaho on August 25, 2000.

N. "Wallace Yard" shall mean the area of properties owned historically and/or presently by BNSF or UPRR, or by their respective affiliated or predecessor companies, between mileposts 78.5 and 79.8 of the Wallace-Mullan Branch right-of-way within or adjacent to the town of Wallace, Idaho, as depicted in Figure 3 of the SOW.

O. "Work" shall mean all activities Respondents are required to perform under this Consent Order, including the SOW, except those required by Section XVI (Record Preservation).

IV. PARTIES BOUND

4.1 This Consent Order applies to and is binding upon EPA, IDEQ, and Respondents, their agents, successors, and assigns. Respondents are responsible for carrying out all actions required of them by this Consent Order. The signatories hereto certify that they are authorized to execute and legally bind the parties

they represent to this Consent Order. No change in the ownership or corporate status of the signatories shall alter their responsibilities under this Consent Order.

4.2 Respondents shall provide a copy of this Consent Order to any proposed owner or successor in interest before a controlling interest in Respondents is transferred. Respondents shall also provide a copy of this Consent Order to each contractor hired to perform any Work required under this Consent Order, and to each person representing it with respect to the Site or the Work. Respondents shall condition all contracts entered into for performance of the Work in conformity with the terms of this Consent Order. Respondents, or their contractors, shall provide written notice of the Consent Order to all subcontractors hired to perform any portion of the Work. Notwithstanding the terms of any contract, Respondents shall be responsible for ensuring that their subsidiaries, employees, contractors, subcontractors, consultants and agents comply with this Consent Order.

V. STATEMENT OF PURPOSE

5.1 In entering into this Consent Order, the objectives of EPA and IDEQ, in consultation with CDAT, and Respondents are to determine the nature and extent of any release and any threat to the public health, welfare or the environment caused by the release or threatened release of hazardous substances at or from the Site, and to determine and evaluate alternatives for actions to prevent, mitigate or otherwise respond to any release or

threatened release of hazardous substances at or from the Site by conducting an EE/CA.

5.2 The parties do not intend this Consent Order to resolve any claims against BNSF for liability for damages for injury to, destruction of, or loss of natural resources at or related to the Site, or for the costs of assessing such damages. Consistent with the Wallace-Mullan Branch Consent Decree, UPRR has resolved all claims that may be asserted against it with respect to natural resource damages in the Coeur d'Alene Basin, including the Wallace Yard, Canyon Creek and Ninemile Creek.

5.3 The activities conducted by Respondents under this Consent Order are subject to approval by EPA and IDEQ, in consultation with CDAT, and shall be conducted in accordance with the provisions of CERCLA, the National Oil and Hazardous Substance Pollution Contingency Plan (the "NCP"), 40 C.F.R. Part 300, and all applicable EPA guidances, policies and procedures. All activities conducted in compliance with this Consent Order shall be deemed to be in compliance with the NCP.

VI. FINDINGS OF FACT

6.1 The findings and conclusions presented in this and the following Sections are made by EPA for purposes of establishing EPA's jurisdiction to enter into this Consent Order. By signing and taking actions under this Consent Order, Respondents do not agree with or admit and specifically reserve the right to controvert the following findings of fact in this Section and conclusions of law in Section VII below. Respondents do not admit

any liability arising out of the transactions or occurrences alleged in this Consent Order, nor do Respondents acknowledge that any alleged release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. Such findings and conclusions shall not be admissible in evidence against the Respondents in any judicial or administrative proceeding other than a proceeding by the State of Idaho, including IDEQ, or the United States, including EPA, to enforce this Consent Order or any judgment enforcing it.

6.2 No later than 1890, UPRR and BNSF, or affiliated and/or predecessor companies, including, respectively, the Oregon-Washington Railroad & Navigation Company ("OWR&N") and the Northern Pacific Railway Company ("NP"), each began rail service on "spur" lines from the town of Wallace, Idaho, along Canyon Creek to mines near Burke, Idaho. Around 1900, NP also began rail service on a spur line to mines along nearby Ninemile Creek.

6.3 In the early 1890s, affiliated and/or predecessor companies of UPRR and NP each began using separate areas near the present town of Wallace, Idaho, in an area known as the Wallace Yard, for railcar storage, switching, and other operations. Westward through the Wallace Yard flows the South Fork of the Coeur d'Alene River. In 1980, BNSF transferred its interest in real property, including the Wallace Yard and the Spur Lines, via quitclaim deed to OWR&N.

6.4 Rail loading, storage, and transportation of mining products historically led to releases of metals, including arsenic, lead, and zinc, into the environment at some locations within the Site.

6.5 In 1919, NP leased part of the area known as the Wallace Yard to the Hercules Mining Company ("Hercules") for purposes including the milling of ores and "depositing, storing and impounding any and all tailings." Hercules operated a mill on the Wallace Yard and in the process released waste products, such as mill tailings, in an area of the Site.

6.6 In some locations within or connected to the Site, railroad lines were constructed over fluvially deposited tailings or were constructed using tailings or waste rock for ballast.

6.7 Sampling data collected in 2001 on behalf of EPA identified high concentrations of metals within an area of the Wallace Yard. Maximum concentrations identified in specific locations in a single sampling effort in this area were as follows:

Lead: 224,870 parts per million (ppm)

Arsenic: 7027 ppm

Zinc: 6905 ppm

6.8 Actual exposures to arsenic, lead, and zinc for sufficient durations in sufficient concentrations are known or suspected to cause a variety of adverse health and environmental effects.

6.9 Portions of the Site, including the Wallace Yard, are

near residential areas, including the town of Wallace, creating the potential for human exposure to hazardous substances within the Site.

6.10 In 2002, a recreational trail crossing through the Wallace Yard is expected to open. The recreational trail is not within the scope of this Consent Order, but is instead the subject of the Wallace-Mullan Branch Consent Decree.

VII. CONCLUSIONS OF LAW

7.1 Based on the Findings of Fact set forth above, EPA has made the legal determinations in this Section.

7.2 The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

7.3 Substances found in the Site, including the metals identified in the Findings of Fact above, constitute "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

7.4 Respondents are each a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

7.5 Respondents are each liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as provided below:

A. Respondent UPRR is the present "owner" and/or "operator" of a portion of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

B. Respondent BNSF, or its predecessor, was an

"owner" and/or "operator" of a portion of the facility at the time of disposal of any hazardous substances described in this section at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601 (20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 107(a)(2).

7.6 The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

7.7 Conditions at the Site may present an imminent and substantial endangerment to public health, welfare, or the environment. These factors may include, but are not limited to, the elevated concentrations of hazardous substances in soils largely at or near the surface; and the actual or potential exposure of nearby human populations, animals, and aquatic organisms to such hazardous substances.

7.8 The actual or threatened release of hazardous substances within and from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VIII. EPA AND IDEQ DECISIONMAKING PROCESS

8.1 EPA and IDEQ, in consultation with CDAT, shall, whenever possible, make decisions by consensus at the Project Coordinator level. In the event a consensus decision cannot be reached by the EPA and IDEQ Project Coordinators in consultation with CDAT, a

meeting or telephone conference shall be scheduled and held within five days among the EPA, CDAT, and IDEQ Project Coordinators and their immediate supervisors involved in the dispute to reach a consensus decision between EPA and IDEQ, in consultation with CDAT. If consensus cannot be reached by the Project Coordinators and their immediate supervisors, the dispute shall be immediately elevated to the EPA Region 10 Director of the Office of Environmental Cleanup and the IDEQ Waste Program Administrator, who shall meet or confer by telephone within five days in an attempt to resolve the dispute through consensus. If no consensus can be reached, the decision of EPA and IDEQ applicable to Respondents shall be the final decision made by the EPA Region 10 Director of the Office of Environmental Cleanup. Respondents shall only be subject to a consensus decision or an EPA Region 10 Director final decision, approval, disapproval, determination, comment and/or direction. Respondents are not required to respond to any decisions, approvals, disapprovals, determinations, comments, and/or directions that are not made by consensus by EPA and IDEQ, in consultation with the CDAT, or are not resolved and made final by the EPA Region 10 Director of the Office of Environmental Cleanup in accordance with this Paragraph.

IX. WORK TO BE PERFORMED

9.1 EPA and IDEQ, in consultation with CDAT, have reviewed and approved the Statement of Work (SOW) attached hereto as Appendix 1 and incorporated by this reference, and have found it to be consistent with the NCP and relevant EPA guidance documents.

Respondents shall finance and perform the Work as set forth in the SOW, consistent with this Consent Order.

9.2 Respondents shall submit a draft Sampling and Analysis Plan (SAP) to CDAT for its review and to EPA and IDEQ for their review and approval. The SAP will include procedures for collecting, transporting, and analyzing all samples collected at the Site, as well as procedures for quality assurance/quality control (QA/QC). The SAP shall comply with 40 C.F.R. § 300.415(b)(4)(ii) and include a Quality Assurance Project Plan consistent with EPA's guidance entitled "EPA Guidance for Quality Assurance Project Plans," EPA QA/G-5 (EPA/600/R-98, Feb. 1998). The SAP shall identify laboratories and data quality assurance organizations to be used during performance of the EE/CA.

9.3 Respondents shall submit a draft Health and Safety Plan to CDAT for its review and to EPA and IDEQ for their review and approval. The Health and Safety Plan shall be consistent with any applicable state regulations and applicable agency guidance documents, including EPA's current Standard Operating Safety Guide.

9.4 Respondents shall prepare, perform, and submit to CDAT for its review and to EPA and IDEQ for their review and approval an Engineering Evaluation/Cost Analysis (EE/CA). The EE/CA shall include, but is not limited to, the following:

- A. An identification of removal objectives;
- B. An identification and comparative analysis of

removal action alternatives, including an analysis of their effectiveness, cost, and ability to be implemented;

C. Recommended removal action alternatives for each portion of the Site.

9.5 All Work shall be under the direction and supervision of a qualified contractor. Before the Work begins, Respondents shall notify EPA in writing of the identity and qualifications of the proposed contractors, subcontractors and laboratories to be used in carrying out the Work. The qualifications of such personnel shall be subject to EPA review, for verification and approval that they meet technical background and experience requirements. If EPA disapproves in writing of any person's technical qualifications, EPA shall notify Respondents of the reasons for the disapproval and Respondents shall notify EPA of the identity and qualifications of the replacement within 30 days of the written notice. During the course of the Work, Respondents shall notify EPA, in writing, of any changes or additions in the contractors used to carry out the Work and shall provide their names, titles and qualifications. EPA shall have the same right to approve such changes and additions as it has with respect to the original contractors proposed by Respondents.

9.6 Respondents shall conduct the Work, including the submission of deliverables identified in this Section, according to the schedule and specifications set forth in the attached SOW or as the SOW may be amended or modified upon agreement by EPA and IDEQ and Respondents, in consultation with CDAT, from time to

time. All such Work shall be conducted in accordance with CERCLA, the NCP, and applicable EPA guidances, including, but not limited to, the "Guidance on Conducting Nontime-critical Removal Actions Under CERCLA" (EPA Office of Emergency and Remedial Response, August 1993).

9.7 Unless otherwise specified, if EPA and IDEQ, in consultation with CDAT, disapprove of or require revisions to any deliverable, in whole or in part, Respondents shall amend and submit to EPA, CDAT, and IDEQ a revised deliverable which is responsive to all comments from EPA and IDEQ, within 30 days of receiving such comments, unless EPA and IDEQ, in consultation with CDAT, determine additional testing or analysis is needed pursuant to Paragraph 10.1 herein, in which case Respondents shall amend and submit the revised deliverable within the period agreed to by the Project Coordinators.

9.8 EPA and IDEQ, in consultation with CDAT, reserve the right to comment on, modify, and/or direct changes to be made by Respondents in all deliverables. At EPA's and IDEQ's request, Respondents must fully correct all deficiencies and/or respond to all comments in subsequent or resubmitted deliverables.

9.9 Neither failure of EPA or IDEQ to expressly approve or disapprove Respondents' submissions within a specified time period(s), nor the absence of comments, shall be construed as approval of such submissions by EPA and IDEQ. EPA will provide written notice to the Project Coordinators when a deliverable is approved or disapproved. Pending approval or disapproval,

Respondents shall proceed with all other tasks, deliverables and activities in accordance with the schedules set forth in the SOW or required by this Consent Order. EPA, in consultation with IDEQ and CDAT, reserves its right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity, or deliverable set forth in the SOW or required by this Consent Order at any point during the Work for good cause.

9.10 Any hazardous waste transferred Off-Site under this Order must be taken to a facility acceptable under the Off-Site Rule at 40 C.F.R. § 300.440 and in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3).

X. MODIFICATION OF THE WORK AND APPROVED PLANS

10.1. If at any time during the Work process, Respondents identify a need for additional data beyond that required by this Consent Order or in the approved Plans, a memorandum documenting the need for such data shall be submitted to EPA and IDEQ. The EPA and IDEQ Project Coordinators, in their sole discretion, will determine whether such additional data are to be incorporated into subsequent reports and deliverables required in the SOW.

10.2 In the event of conditions at the Site posing an immediate threat to human health or welfare or the environment, Respondents shall notify EPA, CDAT, and IDEQ immediately upon becoming aware of such conditions. In the event of unanticipated or changed circumstances at the Site that may pose an immediate threat to human health, or welfare or the environment, Respondents shall use their best efforts to notify the EPA, CDAT, and IDEQ

Project Coordinators by telephone within 24 hours of discovery of such circumstances. In addition to the authorities in the NCP, EPA, CDAT, and IDEQ may request that Respondents make appropriate responses to eliminate the immediate threat.

10.3 EPA and IDEQ, in consultation with CDAT, may determine that in addition to tasks defined in the approved Plans (including any approved modification thereto), other activities may be necessary to carry out the EE/CA as set forth in the SOW. EPA and IDEQ may request that Respondents perform this additional Work if EPA and IDEQ, in consultation with CDAT, determine that such Work is necessary for a complete EE/CA. Within 14 days of receipt of EPA's and IDEQ's request, Respondents shall either confirm their willingness to perform the additional Work for the EE/CA, in writing, to EPA and IDEQ, or shall invoke dispute resolution pursuant to Section XVII of this Consent Order. If Respondents agree to perform the additional Work for the EE/CA or if the dispute resolution process results in an adverse decision for the Respondents, Respondents shall implement the additional Work according to the standards, specifications and schedule set forth or approved by EPA and IDEQ in a written modification or supplement to the relevant Plan. In the event Respondents do not perform the additional Work for the EE/CA or such Work is not completed to the satisfaction of EPA and IDEQ, in consultation with CDAT, EPA and IDEQ may invoke any enforcement authority provided by CERCLA, as described in Section XXIII; provided however that Respondents shall not be subject to stipulated

penalties under Section XVIII for additional Work that Respondents have disputed and not agreed to perform. However, nothing in this Consent Order shall obligate the Respondents to undertake any Work outside of the Site boundary without Respondents' consent. The withholding of consent by Respondents to the performance of Work outside of the Site boundary shall not be subject to dispute resolution.

10.4 The following modifications or changes may be made, in consultation with CDAT and Respondents, by written agreement of the EPA and IDEQ Project Coordinators: (1) technical field modifications to any Plan required under the SOW; (2) modifications to the schedules for deliverables in the SOW; and (3) any other change to the plans required in the SOW, not otherwise addressed in Paragraphs 9.2 and 9.3 above.

XI. QUALITY ASSURANCE

11.1 Respondents shall assure that Work performed, samples taken and analyses conducted conform to the requirements of the SOW, and the quality assurance requirements in the approved Quality Assurance Project Plan. Respondents shall assure that field personnel used by them are properly trained in the use of field equipment and in chain-of-custody procedures.

XII. PROGRESS REPORTS, MEETINGS, AND COST UPDATES

12.1 In addition to the deliverables set forth in this Consent Order, unless otherwise agreed by the Project Coordinators, Respondents shall provide monthly progress reports to EPA, CDAT, and IDEQ by the tenth of each month. At a minimum,

these progress reports shall: (1) describe the actions which have been taken to comply with this Consent Order during the preceding month; (2) include results of all sampling and tests performed by Respondents during the preceding month; (3) describe Work planned for the next two months; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, as well as the solutions developed and/or implemented to address any actual or anticipated problems or delays.

12.2 Respondents shall participate in such meetings as EPA and IDEQ, in consultation with CDAT, may schedule during the performance of the Work. Such meetings may include discussion of anticipated problems or new issues, and may proceed by telephone conference when appropriate.

XIII. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

13.1 All results of field sampling, tests, modeling, or other environmental data (including raw data) generated by Respondents during implementation of this Consent Order with regard to the Work shall be submitted to EPA, CDAT, and IDEQ in the progress reports described in the preceding Section of this Consent Order. EPA, CDAT, and IDEQ shall make available to the Respondents all results of field sampling, tests, modeling, or other environmental data, (including raw data) generated by or on behalf of EPA, CDAT, and IDEQ with regard to the Work during implementation of this Consent Order.

13.2 Respondents will verbally notify EPA and IDEQ at least 15 days prior to conducting field events described in the SOW or

Sampling and Analysis Plan. At the verbal or written request of EPA or IDEQ, or their authorized representative(s), Respondents shall allow split or duplicate field samples to be taken by EPA or IDEQ or their authorized representatives. All such split or duplicate field samples shall be analyzed by the quality assurance methods identified in the approved plan under the SOW.

13.3 EPA, IDEQ and their authorized representatives shall have the authority at all reasonable times to enter and freely move about the property at the Site and any Off-Site areas where Work is being performed, to the extent access to such property is controlled by Respondents, for the purposes of inspecting conditions, activities, records, operating logs, and contracts related to the Site or Respondents and their contractor(s) pursuant to this Consent Order; reviewing the progress of Respondents in carrying out this Consent Order; conducting such tests as EPA and IDEQ, in consultation with CDAT, deem necessary; and verifying the data submitted by Respondents. Respondents shall permit EPA, CDAT, and IDEQ and their authorized representatives to inspect and copy all non-privileged records, files, photographs, documents, sampling and monitoring data and other writings related to Work undertaken in carrying out this Consent Order. Nothing herein shall be construed to limit or affect EPA's right of entry or inspection authority under federal law or IDEQ's right of entry or inspection under state law.

13.4 Respondents may assert claims of business confidentiality to IDEQ, CDAT, and EPA covering part or all of the

information submitted pursuant to the terms of this Consent Order subject to the provisions of Idaho Code § 9-337 *et seq.*, and of 40 C.F.R. § 2.203, provided such claims are allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Such claim shall be asserted in the manner described by Idaho Code § 9-337 *et seq.* and 40 C.F.R. § 2.203(b), and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. Information determined by IDEQ to be confidential will be exempt from disclosure as a public record pursuant to Idaho Code § 9-338. Respondents may request that CDAT keep confidential and protected from disclosure any such information that the Respondents designate as confidential. If no such claim of confidentiality accompanies the information when it is submitted to EPA, CDAT, and IDEQ, it may be made available to the public by EPA, CDAT, and IDEQ without further notice to Respondents.

13.5 In entering into this Consent Order, Respondents, EPA and IDEQ waive any objections to the QA/QC procedures applied to any data gathered, generated, or evaluated by EPA, IDEQ, or Respondents in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Consent Order or any Plan or Sampling and Analysis Plan approved by EPA and IDEQ. If Respondents object to any data relating to the Work, they shall submit a report to EPA, CDAT, and IDEQ that identifies and explains their objections, describes the acceptable uses of the data, if any, and identifies any limitations to use of

the data. The report must be submitted to EPA within 30 days of the monthly progress report or other deliverable containing the data.

13.6 Respondents agree not to assert privilege or confidentiality claims with respect to any data or documents evidencing Site conditions, sampling or environmental monitoring required to be submitted to EPA and IDEQ pursuant to this Consent Order. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege or protection recognized by federal or State law. In the event such privilege or protection is asserted, upon request, Respondents shall provide EPA, CDAT, and IDEQ with the date, author, recipient or addressee, title or description of the subject of the document, record or information, and the privilege and/or protection asserted by Respondents.

13.7 To the extent that the Site or any other property to which access is required for the implementation of this Consent Order is owned or controlled by persons other than Respondents, Respondents shall use their best efforts to obtain access for EPA, CDAT, IDEQ, their contractors and oversight officials, and Respondents and their authorized representatives. Prior to initiation of field activities on any property, Respondents shall provide to EPA, CDAT, and IDEQ a copy of any additional access agreement(s) pertaining to such property. If access agreements are not obtained within a reasonable time, Respondents shall notify EPA, CDAT, and IDEQ of their failure to obtain access and provide

EPA with a detailed description of their efforts to obtain access. EPA or IDEQ, in their discretion, may seek to obtain access for the Respondents; or may allow Respondents to continue Work without access. In the event neither EPA nor IDEQ obtains access for Respondents, Respondents shall perform all other activities not requiring access to the property in question.

XIV. DESIGNATED PROJECT COORDINATORS

14.1 On or before the effective date of this Consent Order, EPA, IDEQ, CDAT, and Respondents shall each designate a Project Coordinator. EPA's Project Coordinator is Dick Martindale. IDEQ's Project Coordinator is Nick Zilka. CDAT's Project Coordinator is Phillip Cernera. EPA, IDEQ, CDAT, and Respondents have the right to change their respective Project Coordinators, provided the other parties are notified, in writing, at least ten days prior to the change. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between Respondents, IDEQ, CDAT, and EPA shall be directed to each Project Coordinator by facsimile or e-mail, with copies to such other persons as EPA, CDAT, IDEQ, and Respondents may respectively designate. Communications include, but are not limited to, all reports, approvals and other documents and correspondence submitted under this Consent Order.

14.2 In the alternative to electronic submissions, all reports, approvals, disapprovals, and other documents and correspondence which must be submitted under this Consent Order

may be delivered by hand or regular U.S. mail to the designated Project Coordinators at the following addresses:

- (a) For EPA:
Dick Martindale
U.S. EPA, Region 10
Coeur d'Alene Field Office
1910 Northwest Blvd., Suite 208
Coeur d'Alene, Idaho 83814
Phone: (208) 664-4588
Fax: (208) 664-5829
- (b) For IDEQ:
Nick Zilka
Idaho Dept. of Environmental Quality
1005 W. McKinley Avenue
Kellogg, ID 83837
Phone: (208) 783-5781
Fax: (208) 783-4561
- (c) For CDAT:
Phillip Cernera, Project Manager
Natural Resource Damage Assessment
Coeur d'Alene Tribe
424 Sherman Avenue, Suite 306
Coeur d'Alene, ID 83814
Phone: (208) 667-4119
Fax: (208) 667-4657
- (d) For UPRR:
Gary Honeyman
Union Pacific Railroad
221 Hodgeman
Laramie, WY 82072
Phone: (307) 745-6532
Fax: (307) 745-3042
- (e) For BNSF:
Bruce Sheppard
Manager, Environmental Remediation
The Burlington Northern and Santa Fe Railway Company
2454 Occidental Ave., South, Suite 1A
Seattle, WA 98134-1451
Phone: (206) 625-6035
Fax: 9206) 625-6007

14.3 EPA's Project Coordinator shall have the authority vested in a Remedial Project Manager (RPM) and On-Scene

Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority, consistent with the NCP, to halt any Work required by this Consent Order, and to take any necessary response action when he determines that emergency conditions at the Site may present an immediate endangerment to public health, welfare, or the environment.

14.4 In addition to their Project Coordinators, EPA, CDAT, and IDEQ may arrange for other qualified persons to assist in their oversight and review of the conduct of the Work, pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such persons may observe work and make inquiries in the absence of the EPA, CDAT, or IDEQ Project Coordinator, but are not authorized to modify the SOW.

XV. OTHER APPLICABLE LAWS

15.1 Respondents shall comply with all applicable state, federal and local laws when performing the Work. No local, state, or federal permit shall be required for any portion of any activity conducted entirely on-site, where such action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621.

XVI. RECORD PRESERVATION

16.1 All records and documents created by Respondents or on Respondents' behalf, which directly relate to the implementation of this Consent Order, shall be preserved by Respondents for a minimum of ten years after completion of any response action as documented by receipt of EPA's Certificate of Completion of the

Work. After this ten year period, Respondents shall notify EPA at least 90 days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, Respondents shall, at no cost to EPA and subject to Paragraphs 13.4 and 13.6 of this Consent Order, give EPA the documents or copies of the documents.

XVII. DISPUTE RESOLUTION

17.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between Respondents and EPA or IDEQ arising under or with respect to this Consent Order and shall apply to all provisions of this Consent Order. Disputes between IDEQ and EPA shall be resolved pursuant to Section VIII. The fact that dispute resolution is not specifically referenced in the individual Sections of the Consent Order is not intended to and shall not bar Respondents from invoking the procedures with respect to any disputed issue.

17.2

a. Any dispute which arises between Respondents and EPA or IDEQ under or with respect to this Consent Order, except a dispute between Respondent and IDEQ under Paragraph 20.2, shall in the first instance be the subject of informal negotiations between the Respondents, IDEQ and EPA. The period for informal negotiations shall not exceed 15 days from the time the dispute arises, unless such period is modified by written agreement of the Project Coordinators. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Informal negotiations shall immediately commence. The written

Notice of Dispute shall be transmitted to the other parties within 15 days of the time that the dispute arises, or the right to informal or formal dispute resolution shall be considered waived. In the event that the parties cannot resolve a dispute informally, the position advanced by EPA shall be binding unless formal dispute resolution is invoked under Paragraph 17.2(b).

b. Within 20 days after the conclusion of the informal negotiation period, Respondents or IDEQ, in consultation with CDAT, may request a determination by EPA's Director, Office of Environmental Cleanup, Region 10, by submitting to EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Respondents.

c. Within 20 days after receipt of Respondents' Statement of Position, the EPA will provide to Respondents, CDAT, and IDEQ its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the EPA.

d. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the EPA Director may allow submission of supplemental Statements of Position by the parties to the dispute.

e. The EPA Director will issue a final administrative decision resolving the dispute, based on the administrative record described in subparagraph d. This decision shall be binding upon the Respondents and IDEQ, subject to the provision for judicial review provided in Paragraph 17.3.

17.3 If the Respondents do not abide by EPA's final administrative decision, EPA reserves the right in its sole discretion to seek either stipulated or statutory penalties and/or to pursue any other enforcement option provided in CERCLA. If EPA seeks enforcement of this Consent Order or pursues any other enforcement option in court, Respondents may seek judicial review of EPA's final administrative decision based on the administrative record developed during the dispute resolution process. Such judicial review of the dispute shall be under the arbitrary and capricious standard.

17.4 While a matter is pending in dispute resolution, Respondents are not relieved of their obligations to perform other activities and submit deliverables. The invocation of dispute resolution does not stay the accrual of stipulated or statutory penalties under this Consent Order.

XVIII. STIPULATED PENALTIES

18.1 EPA, after consultation with IDEQ and CDAT, and in its sole discretion, may impose stipulated penalties for each day that Respondents fail to complete a requirement of this Consent Order in a timely manner. Penalties begin to accrue on the day that performance is due or a violation occurs and shall extend through

the date of completion of the correction. Where a revised submission is required of Respondents, stipulated penalties shall continue to accrue until a satisfactory deliverable is submitted to EPA and IDEQ. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within 30 days of receipt of a demand letter from EPA. EPA, in consultation with IDEQ and CDAT, may in its sole discretion waive imposition of all or a portion of stipulated penalties if EPA determines that Respondents have attempted in good faith to comply with this Consent Order or in the event of timely cure of defects in initial submissions.

18.2 For each day that Respondents fail to perform, fully, any requirement of this Consent Order, in accordance with the schedule and specifications within the SOW, Respondents shall be liable as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 st through 14 th day
\$1000	15 th through 30 th day
\$5000	31 st day and beyond

18.3 Respondents shall pay interest on any unpaid balance of stipulated penalties, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 31 U.S.C. § 3717.

18.4 Respondents shall make all payments on account of stipulated penalties by cashier's or certified check made payable

to the Hazardous Substance Superfund, which are to be transmitted to:

U.S. Environmental Protection Agency
Attn: Superfund Accounting
P.O. Box 360903M
Pittsburgh, PA 15251

18.5 Stipulated penalties may alternatively be paid by wire transfer in accordance with instructions received from Mellon Bank. All payments made under this Section shall indicate that the payment is for stipulated penalties, and shall reference the EPA site identification number 109J, and the name and address of the party making payment. Copies of any check paid pursuant to this Section, and any accompanying transmittal letter, shall be sent to the following:

Regional Financial Management Officer
U.S. EPA Region 10
1200 Sixth Avenue
Seattle, WA 98101

18.6 Respondents shall not dispute the accrual rate for stipulated penalties assessed under this Section. Respondents may dispute whether the violation did in fact occur; the number of days of such violation; and whether such violation should be excused on the basis of Force Majeure. Penalties shall accrue, but need not be paid, during the dispute resolution period. If Respondents do not prevail upon resolution of the dispute, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondents prevail in the dispute resolution, no penalties shall be paid.

18.7 The stipulated penalties provisions in this Section do not preclude EPA or IDEQ from pursuing any other remedies or sanctions, including applicable statutory penalties instead of stipulated penalties, which are available because of Respondents' failure to comply with this Consent Order. Payment of stipulated penalties does not alter Respondents' obligation to complete performance under this Consent Order.

XIX. FORCE MAJEURE

19.1 For purposes of this Consent Order, Force Majeure is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including their contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order, notwithstanding Respondents' best efforts to avoid delay. The requirement that Respondents exercise "best efforts" to avoid the delay includes using best efforts to anticipate any potential Force Majeure event and to address the effects of any potential Force Majeure event: (1) as it is occurring; and (2) following the potential Force Majeure event, such that the delay is minimized to the greatest extent practicable. Force Majeure events shall not include increased costs or expenses of any Work to be performed under this Consent Order or the financial difficulty of Respondents in performing such Work.

19.2 If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a Force Majeure event, Respondents shall notify the

EPA, CDAT, and IDEQ Project Coordinators (or, in their absence, the Director of the Office of Environmental Cleanup, EPA Region 10) by telephone, within two working days after Respondents first became aware that the event might cause a delay. Within five working days thereafter, Respondents shall provide a written statement of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; and a schedule for implementation of any measures to be taken to mitigate the effect of the delay. Respondents shall exercise best efforts to avoid or minimize any delay and the effects of such delay. Failure to comply with the above requirements as to any event shall preclude Respondents from asserting any claim of Force Majeure as to that event.

19.3 If EPA and IDEQ, in consultation with CDAT, agree that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Order that are directly affected by the Force Majeure event shall be extended for a period of time not to exceed the actual duration of the delay caused by the Force Majeure event. An extension of the time for performance of the obligation directly affected by the Force Majeure event shall not, of itself, extend the time for performance of any subsequent obligation.

19.4 If EPA and IDEQ, in consultation with CDAT, do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, or do not agree with Respondents on the length of the proposed extension of time, the issue shall be

subject to the dispute resolution procedures set forth in Section XVII of this Consent Order. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondents exercised or are using best efforts to avoid and/or mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraph 19.1.

19.5 Should Respondents carry the burden set forth in the preceding paragraph, the delay at issue shall not be deemed to be a violation of the affected obligation of this Consent Order.

XX. PAYMENT OF OVERSIGHT AND RESPONSE COSTS

20.1 Respondents shall pay all response costs not inconsistent with the National Contingency Plan incurred by IDEQ with respect to the Work and this Consent Order pursuant to CERCLA and Idaho Code §§ 39.101 et. seq. and §§ 39-4401 et. seq. Response costs shall include all costs, including, but not limited to, direct and indirect costs that IDEQ incurs in overseeing Respondents' implementation of this Consent Order and in performance by IDEQ of activities required as part of this Work under this Consent Order. Within 20 days of the effective date of this Consent Order, IDEQ shall provide Respondents with a detailed written budget for IDEQ's anticipated response costs for this Consent Order in the budget year beginning July 1, 2002. Respondents shall fund the first two quarters of each budget year

within 30 days of receiving IDEQ's estimated budget. No later than 45 days after the end of each quarter of each budget year, IDEQ shall provide Respondents with an accounting of actual response costs incurred in such quarter. Payments by Respondents of the third and fourth quarter of each budget year shall be made no later than 30 days prior to each such quarter and shall be reconciled against actual response costs incurred in the preceding quarters. Payment shall be made by check payable to "Idaho Department of Environmental Quality" and reference this Consent Order and be directed to the following address:

Idaho Department of Environmental Quality
Fiscal Office
1410 N. Hilton
Boise, ID 83706.

20.2 In the event Respondents contend that payment of estimated response costs to IDEQ in accordance with Paragraph 20.1 would include costs outside the scope of this Consent Order, costs inconsistent with the NCP, or costs resulting from an accounting error, Respondents shall make timely payment of all undisputed estimated costs and, at the same time, specifically identify the disputed costs. Respondents and IDEQ agree to attempt informal dispute resolution of the dispute during the 14-day period following notification by Respondents of their objection. If at the end of the 14-day informal dispute resolution period Respondents and IDEQ have not resolved the dispute, Respondents shall either pay any remaining disputed costs or notify IDEQ that Respondents will seek judicial review of the disputed costs. Any

costs not paid in full in accordance with Paragraph 20.1 and 20.2 shall accrue interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

XXI. INSURANCE AND INDEMNIFICATION

21.1

a. Prior to commencing any Work under this Consent Order, Respondents shall obtain comprehensive general liability (CGL) and automobile insurance. The CGL insurance shall have an annual aggregate limit of not less than two million dollars, naming the United States and State of Idaho as additional insureds, to insure against all claims of injury or property damage to third parties arising from or related to such work. Respondents shall maintain automobile liability insurance as follows: bodily injury liability \$500,000 each person, one million dollars each occurrence; property damage liability \$500,000 each occurrence. Such insurance shall be maintained for the duration of this Consent Order and for two years after completion of all Work required hereunder. In lieu of such coverage, Respondents, at their option, may provide evidence of financial capacity sufficient for purposes of self-insurance pursuant to the requirements in 40 C.F.R. Part 265, Subpart H.

b. Respondents may demonstrate by evidence satisfactory to EPA that their contractor or subcontractors maintain equivalent coverage, or coverage for the same risks but in a lesser amount or for lesser terms, in which case Respondents need to provide only

that portion of the insurance described above which is not maintained by the contractor or subcontractor. At least seven days prior to commencing any field work under this Consent Order, Respondents shall provide EPA, CDAT, and IDEQ with copies of the applicable policies or other evidence of the required coverage.

c. For the duration of this Consent Order, Respondents shall satisfy, or ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding workers compensation coverage for all persons performing field work on their behalf in implementing this Consent Order. Prior to commencing such work, Respondents shall provide EPA, CDAT, and IDEQ with copies of the applicable policies or other evidence of such coverage.

21.2 Respondents agree to indemnify and hold harmless the State of Idaho and the United States, their agencies, departments, agents and employees, from any and all claims or causes of action arising from or on account of the negligent or other wrongful acts or omissions of Respondents, their employees, contractors, agents, receivers, successors, or assigns in carrying out activities under this Consent Order. The United States, State of Idaho, or any agency or authorized representative thereof shall not be held out as a party to any contract entered into by Respondents in carrying out activities under this Consent Order.

XXII. JUDICIAL REVIEW

22.1 Nothing in this Consent Order shall be construed as authorizing any person to seek judicial review of any EPA action

or work where review is barred by any provision of CERCLA, including, without limitation, Section 113(h) of CERCLA, 42 U.S.C. § 9613(h); provided however that Respondents may seek judicial review of disputed costs under paragraph 20.2.

XXIII. RESERVATIONS OF RIGHTS

23.1 EPA and IDEQ reserve the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any costs incurred in the event that EPA or IDEQ performs any Work required by this Consent Order. EPA reserves the right to recover all past and future response costs incurred by the United States in connection with response activities conducted under CERCLA at this Site. The State of Idaho reserves the right to recover all future response costs incurred by the State of Idaho that are beyond the scope of the Work under this Consent Order. The Respondents do not waive and expressly reserve their rights to contest any such actions.

23.2 EPA reserves the right to bring an action against Respondents to collect stipulated penalties assessed pursuant to Section XVIII of this Consent Order, or to elect to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. The Respondents do not waive and expressly reserve their rights to contest any such actions.

23.3 Respondents reserve their rights to assert any claims for contribution or any other claims or causes of action they may have against other potentially responsible parties or against each other, at or related to the Site.

23.4 Except as expressly provided in this Consent Order, each party reserves all other rights and defenses it may have. Except as provided in this Consent Order, IDEQ or EPA reserve their authority, including, but not limited to, EPA's emergency removal authority and its enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated or statutory penalties, and/or punitive damages. By entering into this Consent Order, Respondents do not admit and expressly reserve their right to contest that CERCLA authorizes CDAT to enforce this Order, to recover any response costs at or related to the Work, the EE/CA or the Site, or to otherwise require or have authority over the Work, the EE/CA, or any other response actions at or related to the Site.

23.5 Upon satisfactory completion of the requirements of this Consent Order, Respondents shall have resolved their liability to EPA and IDEQ for the Work performed, and their liability to the State of Idaho for the costs paid to IDEQ pursuant to Section XX and IDEQ releases and covenants not to sue for such Work and for such costs. Respondents are not released from liability, however, for (1) any response costs incurred by EPA in connection with the Work; (2) any response actions taken at the Site beyond the scope of this Consent Order; or (3) natural resource damages in accordance with CERCLA, except that UPRR is released from liability for natural resource damages to the full extent provided by the Wallace-Mullan Branch Consent Decree, and nothing herein shall be construed in a manner that does not give full effect to

the Wallace-Mullan Branch Consent Decree, including but not limited to the covenants not to sue UPRR set forth in such Decree.

23.6 The parties agree that Respondents are entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims that may be asserted by any person or entities other than the Respondents to this Consent Order to the full extent as provided by CERCLA, Section 113(f)(2), 42 U.S.C. § 9613 (f)(2), for Work performed in accordance with this Consent Order.

XXIV. OTHER CLAIMS

24.1 In entering into this Consent Order, Respondents waive any right to seek reimbursement under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), and any right to present claims under Sections 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612, for the Work.

24.2 Nothing in this Consent Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

24.3 Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, or entity not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to or from the Site.

XXV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

25.1 The effective date of this Consent Order shall be the date it is signed by EPA.

25.2 This Consent Order may be amended by mutual agreement of EPA, IDEQ, and Respondents, in consultation with CDAT. All such amendments shall be in writing and shall be effective when signed by all parties to this Consent Order. Project Coordinators are not authorized to sign amendments to the Consent Order.

25.3 No informal advice, guidance, suggestions or comments by EPA, CDAT, or IDEQ regarding reports, plans, specifications, schedules or any other document submitted by Respondents shall be construed as relieving Respondents of their obligation to obtain such formal approval as may be required by this Consent Order.

XXVI. SATISFACTION

26.1 The provisions of this Consent Order shall be satisfied when Respondents certify in writing to EPA, CDAT, and IDEQ that all Work activities required under this Consent Order, including any additional Work agreed to by Respondents and any stipulated penalties demanded by EPA, have been completed and/or paid, and EPA, after consultation with IDEQ and CDAT, has approved the certification. EPA will respond within 30 days to any such request for approval of Respondents' certification or within a longer period of time as may be agreed by the Project Coordinators. If the EPA does not respond within 30 days after receipt of Respondents' request or within the agreed on time, or responds unfavorably, Respondents may invoke dispute resolution

under Section XVII. Such certification and approval shall not, however, terminate Respondents' obligation to comply with Sections XVI and XXI of this Consent Order.

26.2 The certification required in the preceding paragraph shall be signed by a responsible official representing each Respondent, who shall certify to the best of his or her knowledge that the information contained in or accompanying the certification is true, accurate, and complete. For purposes of this Consent Order, a responsible official is a corporate official in charge of a principal business function.

XXVII. SEPARATE DOCUMENTS

27.1 This Consent Order may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

STIPULATED, AGREED, AND APPROVED FOR ISSUANCE

FOR UNION PACIFIC RAILROAD COMPANY:

By: Lawrence E. Wzorek

Date: August 21, 2002

Name: Lawrence Wzorek

Title: Assistant Vice President

FOR THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY:

By: _____

Date: _____

Name: _____

Title: _____

FOR THE STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: _____

Date: _____

Name: C. Stephen Allred

Title: Director, Dept. of Environmental Quality

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 10:

By: _____

Date: _____

Name: Ann Williamson

Title: Unit Manager, Environmental Cleanup Office

STIPULATED, AGREED, AND APPROVED FOR ISSUANCE

FOR UNION PACIFIC RAILROAD COMPANY:

By: _____ Date: _____

Name: Lawrence Wzorek

Title: Assistant Vice President

FOR THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY:

By: B. A. Sheppard Date: 8-21-02

Name: Bruce A. Sheppard

Title: Manager Environmental Remediation

FOR THE STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: _____ Date: _____

Name: C. Stephen Allred

Title: Director, Dept. of Environmental Quality

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 10:

By: _____ Date: _____

Name: Ann Williamson

Title: Unit Manager, Environmental Cleanup Office

STIPULATED, AGREED, AND APPROVED FOR ISSUANCE

FOR UNION PACIFIC RAILROAD COMPANY:

By: _____ Date: _____

Name: Lawrence Wzorek

Title: Assistant Vice President

FOR THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY:

By: _____ Date: _____

Name:

Title:

FOR THE STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:  _____ Date: 8/20/02

Name: C. Stephen Allred

Title: Director, Dept. of Environmental Quality

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 10:

By: _____ Date: _____

Name: Ann Williamson

Title: Unit Manager, Environmental Cleanup Office

STIPULATED, AGREED, AND APPROVED FOR ISSUANCE

FOR UNION PACIFIC RAILROAD COMPANY:

By: _____ Date: _____

Name: Lawrence Wzorek

Title: Assistant Vice President

FOR THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY:

By: _____ Date: _____

Name:

Title:

FOR THE STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: _____ Date: _____

Name: C. Stephen Allred

Title: Director, Dept. of Environmental Quality

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 10:

By: Ann Williamson Date: 8/22/02

Name: Ann Williamson

Title: Unit Manager, Environmental Cleanup Office

Wallace Yard and Spur Lines Statement of Work

1 INTRODUCTION

The following Statement of Work (SOW) outlines the approach to conduct an Engineering Evaluation/Cost Analysis (EE/CA) for a non-time critical removal action for railroad or former railroad properties in the area of Wallace, Idaho. This SOW was prepared in connection with an Administrative Order of Consent (AOC) between the U.S. Environmental Protection Agency (EPA) and the Idaho Department of Environmental Quality (IDEQ), and Union Pacific Railroad Company (UPRR) and Burlington Northern and Santa Fe Railway Company (BNSF). UPRR and BNSF will collectively be referred to as Respondents.

In particular, this action addresses two primary areas that were not included in the year 2000 Consent Decree (Case No. CV 99-606-N-EJL) between UPRR and the United States, State of Idaho and the Coeur d'Alene Tribe. These areas are described on page 15 of the Consent Decree as the spurs or connecting branch lines outside of the Right-of-Way depicted in Figure 2 of this SOW, and the Wallace Yard between mile marker 78.5 and 79.8 depicted in Figure 3 of this SOW. These areas are collectively known as the "Site," as depicted in Figure 1 of this SOW.

The purpose of this SOW is to describe, in general terms, the investigation, analysis, and evaluation that will be performed to support the identification and selection of a removal action alternative to be implemented to address contamination at this Site.

2. BACKGROUND INFORMATION

Around 1890, rail transport began on "spur" lines from the town of Wallace, Idaho, along Canyon Creek to mines near Burke, Idaho to serve the mining industry in the Silver Valley. Around 1900, rail service also began on a spur line to mines along nearby Ninemile Creek.

In the early 1890s, railroad companies began using an area near the present town of Wallace, Idaho, known as the Wallace Yard, for railcar storage, switching, and other operations. In 1919, the Hercules Mining Company leased part of the area known as the Wallace Yard for purposes including the milling of ores and "depositing, storing and impounding any and all tailings." The lease provided that it was subject to a term of 50 years.

Accidents and spillages of mining and milling materials occurred during normal operations at the Site. The primary contaminants of concern from the associated mining and milling practices include arsenic, cadmium, lead and zinc. However, other contaminants associated with railroad maintenance and operations at the Wallace Yard could have resulted in the release of regulated organic compounds as well. In August 2001, EPA collected samples at six locations at the Wallace Yard that were analyzed for arsenic, lead and zinc by the Army Corps of Engineers. The highest concentrations were as follows: arsenic - 7027 mg/kg, lead - 224,870 mg/kg, zinc - 6905 mg/kg.

This Site lies within the Bunker Hill NPL facility for which extensive data exist. However, additional data will be needed to comprehensively characterize the extent of contamination associated with this particular Site.

3. SITE CHARACTERIZATION

The EE/CA should summarize available data on the physical, demographic, and other characteristics of the Site and surrounding areas. These data may be available from previous investigations, or other activities by Respondents, EPA and IDEQ at the Site. New data must also be collected and analyzed to support removal action alternatives.

- a. Site description and background - Must include current and historical information. Develop maps, and delineate property ownership, municipal boundaries, streets, utility lines, drainage patterns, current and future land use, depth to groundwater and proximity to surface water. Describe the materials that were manufactured, stored, or disposed of at the Site.
- b. Identify previous removal actions - If applicable, identify all removal actions (including non-federal) taken previously at the Site. The types of contaminants, nature and extent of the hazardous substances, type of remedy implemented, and success of that remedy should be described.
- c. Determine source, nature, and extent of contamination - To the extent possible, site characterization data should be gathered during the removal site evaluation to support the EE/CA. This information should include: location of the contaminants; quantity, volume, size, or magnitude of the contamination; physical and chemical attributes of the contaminants; and potential exposure pathways to human health and the environment.
- d. Collect and analyze data - This task includes work efforts involved in scheduling, coordination, tracking, and oversight of sample analysis, and validation of analytical data produced. A Health and Safety Plan must be developed by the Respondents. Respondents must also develop a Sampling and Analysis Plan (SAP), which will include a Field Sampling Plan (FSP), and Quality Assurance Project Plan (QAPP). The FSP must address sampling of groundwater, surface and subsurface soil, surface water, and sediments. Data Quality Objectives (DQOs) shall be developed to assess the success or failure of the sampling effort. The QAPP must also be developed to validate the data.
- e. Perform streamlined risk evaluation - The streamlined risk evaluation uses sampling data collected from the site to identify the contaminants of concern, and provides an estimate of the level of risk posed to human health and the environment. The Coeur d'Alene Basin Remedial Investigation/Feasibility Study has produced separate, conventional risk assessments for ecological and human health that should be consulted and referenced.
- f. Identify Applicable or Relevant and Appropriate Requirements (ARARs) - A detailed analysis of ARARs will be necessary to assure that the removal action alternatives adequately address these requirements.

4 IDENTIFICATION OF REMOVAL ACTION OBJECTIVES

The general removal action objective is to reduce the potential detrimental affects of the contaminants of concern to human health and the environment. The following items should be considered while developing specific removal action objectives.

- a. Statutory Limits on Removal Actions - A discussion regarding section 104 (c)(1) of CERCLA is needed. This section describes statutory limits for Fund-financed removal actions, and may or may not be applicable.
- b. Determination of removal scope - The scope could range from total removal of contaminated materials, to stabilization or capping. Standards for cleanup levels may need to be set to determine when a cleanup objective has been achieved. Federal, state or local ARARs can also be used to determine scope.
- c. Determination of removal schedule - A general schedule is needed for all phases of the removal activities, from conducting the EE/CA to completing the removal action. Factors to be considered that can affect schedule include time needed for sample preparation and analysis, statutory requirements, available financial and technical resources, and weather (short construction season).

5. IDENTIFICATION AND ANALYSIS OF REMOVAL ACTION ALTERNATIVES

Decisions must be made to ensure that an early action will be consistent with any long-term action that may eventually be required. In particular, compatibility with the Coeur d'Alene Basin ROD for Interim Action must be evaluated. Whenever practicable, the alternatives selection process should consider the CERCLA preference for treatment over conventional containment or land disposal approaches to address the principal threat at the Site. Defined alternatives are evaluated against the short and long term aspects of three broad criteria: effectiveness, implementability, and cost.

- a. Effectiveness - Each removal action alternative must be protective of human health, the environment, and workers during implementation. The ability to achieve the removal action objectives must be demonstrated. Compliance with ARARs must be also accomplished.
- b. Implementability - The technical feasibility of each removal action alternative must be evaluated. Some factors to consider include: demonstrated performance at similar sites and the ability to implement the action within the established time frame; the availability of manpower, equipment, services, laboratory space, and disposal facilities (if needed); and administrative issues such as permitting requirements, easements, and the ability to impose institutional controls.
- c. Cost - Includes direct and indirect capital costs, post removal site control, and the present worth of alternatives that will last longer than 12 months.

6 COMPARATIVE ANALYSIS OF REMOVAL ACTION ALTERNATIVES

Once the alternatives have been described and individually assessed against the criteria, a comparative analysis must be conducted to evaluate the relative performance of each alternative in relation to each of the criteria. This is in contrast to the preceding analysis in which each alternative was analyzed independently without consideration of other alternatives. The purpose of the comparative analysis is to identify the advantages and disadvantages of each alternative relative to one another so that key tradeoffs that would affect the remedy selection can be identified.

7. RECOMMENDED REMOVAL ACTION ALTERNATIVE

The EE/CA will ultimately identify the action that best satisfies the evaluation criteria based on the comparative analysis in the previous section. This description should briefly describe the evaluation process used to develop the recommended action. EPA will be responsible for determining the final action. This determination will be placed in the administrative record file concurrently with the EE/CA. This section of the EE/CA may enhance public involvement efforts by describing clearly why the alternative was recommended. Because the EE/CA is open to public comment and evaluation and because EPA is required to prepare a written response to significant comments, the recommended alternative may be modified for the final alternative described in the Action Memorandum.

8. COMMUNITY RELATIONS

The NCP and CERCLA outline a variety of community relations requirements to promote communication. The following are requirements for this non-time critical removal action:

- a. Designate a Community Relations Contact - This person shall coordinate activities with the EPA's Community Involvement Coordinator.
- b. Conduct Community Interviews - In accordance with section 300.415(n) of the NCP, EPA, as lead agency, will conduct interviews with local officials, community residents, and other interested parties. The purpose of these interviews is to solicit information about community concerns, information needs, and how or when citizens would like to be involved in the removal action. This information will be used as background for the Community Relations Plan (CRP).
- c. Prepare the CRP - Pursuant to section 300.415(n) of the NCP, EPA will prepare a CRP before the EE/CA is completed. The CRP will be site-specific that relates community relations techniques and approaches deemed appropriate and relevant to the Site.
- d. Establish an Information Repository - EPA, as lead agency, will establish an Information Repository. The Information Repository is a project file or collection of materials related to this specific non-time critical removal action.
- e. Prepare Presentation Materials - Respondent will work with the lead agency to produce information materials to be used for community outreach.

- f. Provide Public Notice of Availability of EE/CA - A public notice describing EPA's preferred alternative and EE/CA results and announcing its availability for review must be published in the major local newspaper

9 ESTABLISH AN ADMINISTRATIVE RECORD

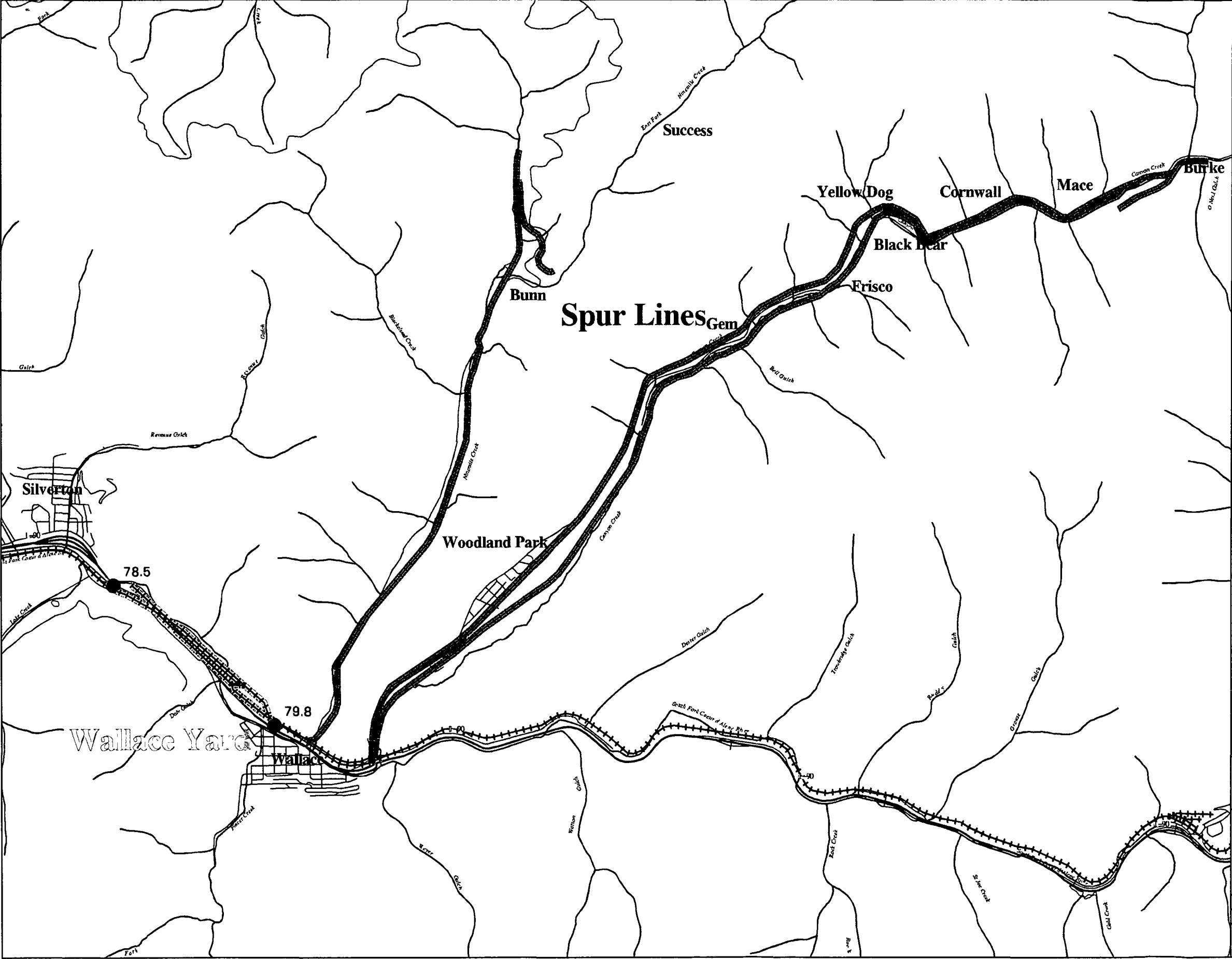
EPA, as lead agency, will establish an administrative record, publish a notice of availability of the administrative record file, hold a public comment period, and develop a written response to significant comments. The administrative record may include site-specific data and comments, guidance documents, technical references, and documents that reflect views of the public (including Respondents), concerning the selection of the removal action. The EE/CA Approval Memorandum, the EE/CA and the Action Memorandum are critical components of the final administrative record file. Respondents will assist EPA with the following actions:

- a. Establish the Administrative Record File - This must be made available for public inspection and copying when the EE/CA is made available for public comment. It should be located at the Information Repository.
- b. Publish Notice of Availability of the Administrative Record File - A public notice must be published when the EE/CA is placed in the administrative record file and is available for comment. This notice will also be used to announce a 30 day public comment period on the EE/CA.
- c. Hold Public Comment Period - A 30 day minimum comment period is required, but could be extended upon request.
- d. Develop Written Response to Significant Comments - This will be included in the administrative record file.

10. SCHEDULE FOR DELIVERABLES

Respondents must submit deliverables for review to the EPA per the following schedule:

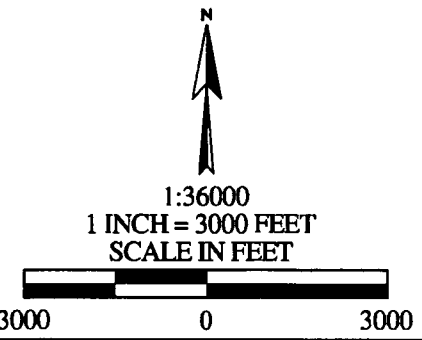
- a. Draft Health and Safety Plan - Within 15 days of the effective date of the AOC.
- b. Draft SAP - Within 30 days of the effective date of the AOC.
- c. Draft EE/CA - Deliverable date to be determined.



EXPLANATION

- Hydrography
River or Stream
- Transportation
Interstate 90
Road or Street
Railroad
- Other Features
Building

DRAFT

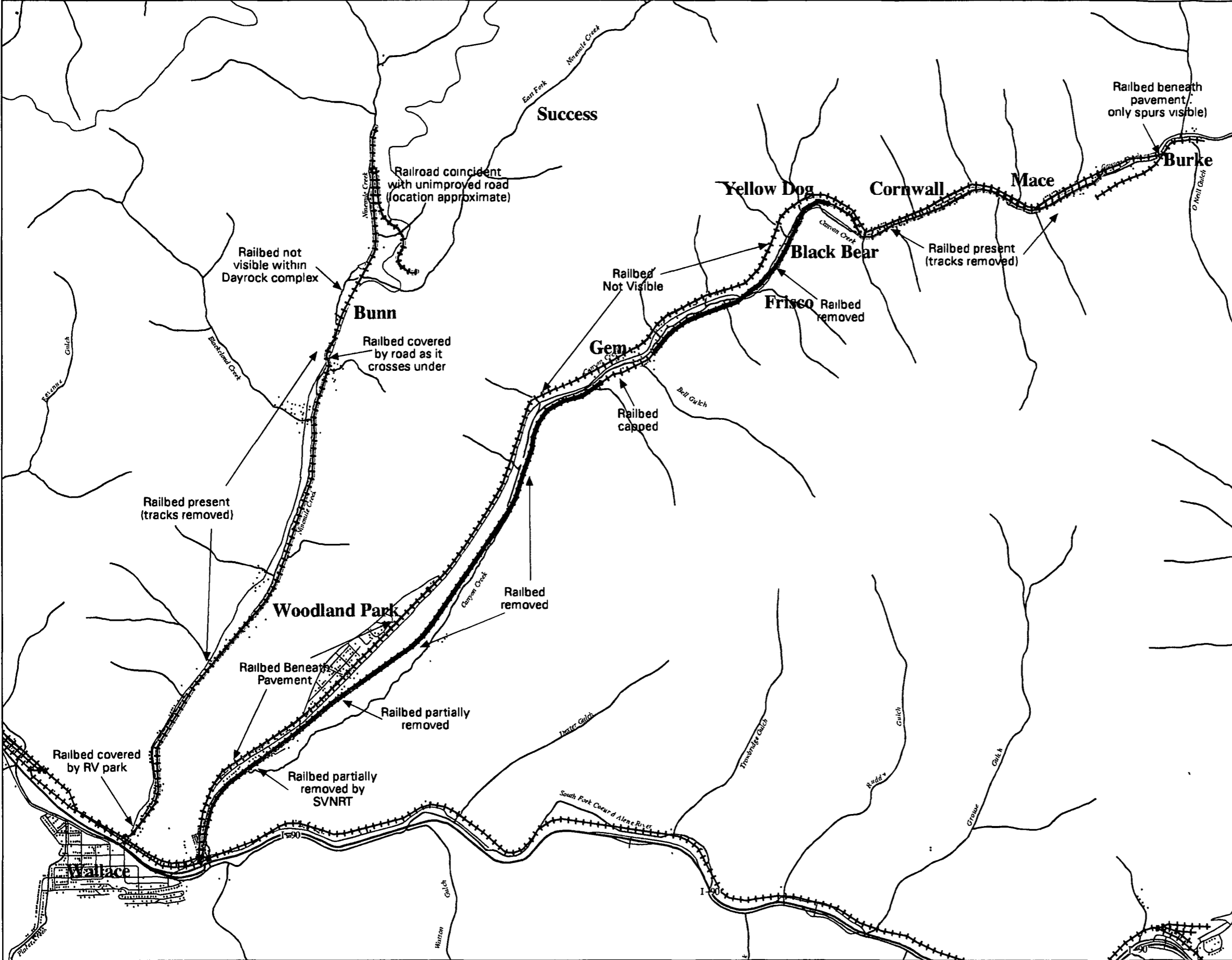


UNION PACIFIC RAILROAD/
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

Figure 1
Wallace Yard EE/CA
Site Location Map

PROJECT: 04-0017-2	DATE: AUGUST 08, 2002
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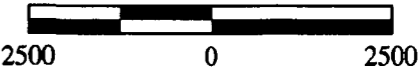
EXPLANATION

- Hydrography
River or Stream
- Transportation
Interstate 90
Road or Street
Railroad
- Other Features
Building

DRAFT



1:30000
1 INCH = 2500 FEET
SCALE IN FEET

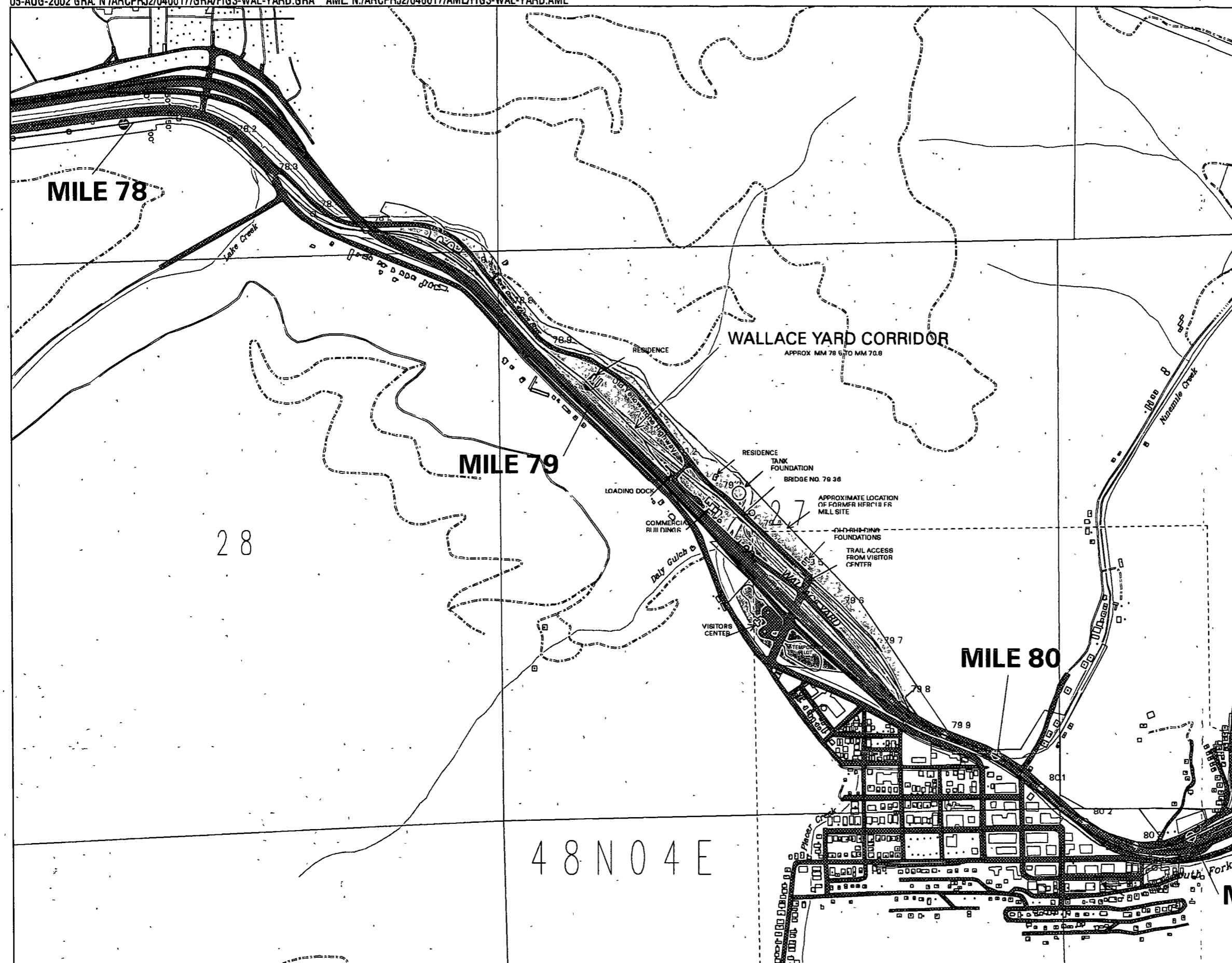


UNION PACIFIC RAILROAD/
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

Figure 2
Wallace Yard EE/CA
Canyon Creek And Ninemile Creek
Spur Lines

PROJECT 04-0017-2	DATE AUGUST 08, 2002
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EXPLANATION

Hydrography

- River or Stream
- Open Water

Transportation

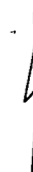
- Primary Road
- Secondary Road
- Improved Road
- Unimproved Road
- Trail

Railroad Right of Way

- Wallace Yard

Note: The right-of-way between approximately MM 78.5 and 78.75 is part of the Element of work of The Wallace-Mullan Branch response action.

DRAFT



1:10800
1 INCH = 900 FEET
SCALE IN FEET

900 0 900

UNION PACIFIC RAILROAD/
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

Figure 3
Wallace Yard EE/CA
Wallace Yard Map

PROJECT:	DATE: AUGUST 05, 2002
REV 0	BY: CRL CHECKED:

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